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No. 96-1454

In The

Supreme Court of the United States

October Term, 1996

PATRICK ROSENSTIEL and CHRISTOPHER LONGLEY,

Petitioners,

vs.

CAROLYN RODRIGUEZ, in her capacity as Chair of the Ethical Practices Board,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioners challenge Minnesota's state campaign financing system that provides partial public funding in return for a candidate's agreement to limit campaign expenditures to a state-determined level. A participating candidate whose opponent does not agree to the expenditure limit and has raised or spent money exceeding threshold amounts is freed from the spending limit and is allowed to retain the public subsidy. In addition, the state will refund up to $50 annually to an individual for contributions to the campaigns of participating candidates, but does not allow a refund for contributions to non-participating candidates.

1. Are the incentives provided for candidates to agree to participate in the above-described campaign financing system so great as to burden First Amendment rights by coercing candidates into agreeing to campaign expenditure limits?

2. Are the provisions of the above-described campaign financing system narrowly-tailored to serve compelling state interests recognized in *Buckley v. Valeo*, 424 U.S. 1 (1976)?

3. Does a campaign finance system that treats challengers and incumbents equally violate the First Amendment because it does not eliminate inherent electoral advantages enjoyed by incumbents?

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent[1] respectfully requests that the Court deny the petition for writ of certiorari seeking review of the decision of the Eighth Circuit Court of Appeals in this case. That opinion (App. A1-A45) is reported at 101 F.3d 1544. The decisions of the district court denying Petitioners' motion for a preliminary injunction (App. A66-A85) and ruling on the merits (App. A46-A65) are unreported.

STATEMENT OF THE CASE

Petitioners, unsuccessful candidates for election to the Minnesota House of Representatives in the 1994 election, challenge the constitutionality of Minnesota's campaign finance system, under which candidates may receive partial public campaign funding in exchange for the candidates' agreement to be bound by campaign expenditure limits. In order to receive public funding, a candidate must sign and file with the Board a written agreement to be bound by the campaign expenditure limits set forth in Minn. Stat. § 10A.25 (1994).[2] Minn. Stat. § 10A.322, subd. 1(a) (1994). A participating candidate

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[1] Respondent is the chair of the state Ethical Practices Board ("Board"), which is the body charged with administration and enforcement of the state campaign finance laws.

[2] Once filed, the agreement may not be rescinded, Minn. Stat. § 10A.25 (1994), and remains in effect until the end of the election cycle. Minn. Stat. § 10A.322, subd. 2 (1994). A candidate who has agreed to the limit but permits his or her campaign committee to spend in excess of the cap is subject to a civil fine of up to four times the amount of excess spending. Minn. Stat. § 10A.28, subd. 2 (1994).

who wins her party primary is eligible for a subsidy from the "party" account which is funded by taxpayer check-offs for that candidate's party on state income tax forms. Minn. Stat. § 10A.31, subds. 5 and 6 (1994). Candidates in the general election who receive the required minimum percentage of the votes[3] are eligible for a subsidy from the "general" account, the amount of which is based on a statutory formula for each office. Minn. Stat. § 10A.31, subd. 5 (1994).[4] The combined subsidy received by a candidate may not exceed 50% of the expenditure limit applicable to that candidate. Minn. Stat. § 10A.31, subd. 7 (1994).

The average subsidy received by candidates for the state senate for the 1992 elections was $10,133. The average subsidy in 1992 for candidates for the house was $5,144. Affidavit of Mary Ann McCoy (filed in opposition to Petitioners' motion for a preliminary injunction) ("McCoy Aff."), para. 2; Eighth Circuit Joint Appendix ("JA") at A-21.[5]

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[3] Candidates for statewide office must receive at least five percent of the votes cast in the general election for that office, and candidates for legislative office must receive at least ten percent of the votes cast in the general election for the specific office for which they were candidates. Minn. Stat. § 10A.31, subd. 7 (1994).

[4] In order to be eligible for public funding a candidate also must raise sufficient private contributions to meet threshold matching fund requirements prescribed in Minn. Stat. § 10A.323 (1994). A candidate who is unopposed in both the primary election and the general election is not eligible to receive public funding. Minn. Stat. § 10A.31, subd. 12 (1994).

[5] The 1992 elections were the latest for which data were available when the record was made in the district court.

The spending limits to which candidates must agree in order to receive the public funding are established in statute, Minn. Stat. § 10A.25, subd. 2(a) (1994), subject to adjustment for inflation, Minn. Stat. § 10A.255 (1994). The spending limits in 1992 were $43,150 for candidates for state senate and $21,576 for candidates for state house of representatives. McCoy Aff., para. 3; JA at A-21. Although normally the limits are increased based on the Consumer Price Index, the 1993 Legislature froze the expenditure limits for the 1994 election at the 1992 levels. Act of May 20, 1993, ch. 318, art. 2, § 52, subd. 4, 1993 Minn. Laws 1907. Consequently, the limit for house candidates in 1994, which was applicable to Petitioners, remained at $21,576.

The average campaign spending in 1992 for senate candidates was $23,648, and for house candidates the average was $12,773. McCoy Aff., para. 6; JA at A-22. Therefore, the average candidate spent barely more than half of the amount allowed by the spending limits.

At the time this action was filed and at the time the district court ruled, the campaign finance law also provided that if a participating candidate was faced in the general election by a major-party opponent who did not participate in the public funding/spending limit program, the participating candidate would not be bound by the spending limit, Minn. Stat. § 10A.25, subd. 10(b)(i) (1994), and would remain eligible to receive the public funding, *id.*, subd. 10(b)(ii).[6] While this matter was pending in the court of appeals, the legislature amended the

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[6] In addition, a 1993 amendment to the campaign finance laws made the participating candidate eligible to receive part of

provision that freed a participating candidate from the spending limit (hereinafter the "expenditure limit waiver"). Instead of being triggered by the non-participation of a major-party opponent, the expenditure limit waiver is now triggered if any non-participating opponent of a participating candidate either raises or expends campaign funds beyond statutory threshold amounts, whether that non-participating opponent is from a major party or not. Minn. Stat. § 10A.25, subd. 10 (1996). Specifically, the spending limit is waived for a participating candidate whose non-participating opponent receives contributions or makes expenditures equal to 20% of the applicable spending limit prior to 10 days before the primary election, or receives contributions or makes expenditures equaling 50% of the spending limit after that date. *Id.*

In addition to the direct public subsidy, an additional incentive to agree to the spending limits is a potential refund for contributors. Individuals may claim a refund of up to $50 ($100 for a married couple filing jointly) for contributions to the campaigns of candidates who have agreed to the limits. Minn. Stat. § 290.06, subd. 23 (1994). However, the law allows a maximum total refund of $50 per individual per year, not $50 for each contribution. A contribution to a participating candidate can qualify for

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the subsidy for which the candidate's non-participating opponent would have been eligible. Minn. Stat. § 10A.25, subd. 10(b)(iii) (1994). The district court held this "opponent's share" provision unconstitutional, and it was repealed by the 1996 Minnesota Legislature. Act of April 11, 1996, ch. 459, § 2, 1996 Minn. Laws 1517.

the refund whether or not the participating candidate's opponent has agreed to the expenditure limits.[7]

Petitioners began this action for declaratory and injunctive relief in August, 1994. Petitioners were then candidates for the Minnesota House of Representatives.[8] Each had signed an agreement under Minn. Stat. § 10A.322 (1994) to abide by the statutory campaign expenditure limit in return for public campaign funding. They alleged that they each could privately raise campaign funds in excess of the spending limit, but were coerced into agreeing to the limit and public funding by the provisions of the Minnesota campaign finance law. The Complaint asked that numerous provisions of the campaign finance law be declared unconstitutional and enjoined.[9]

In September, 1994, Petitioners moved for a preliminary injunction against the operation of the campaign finance laws during the November 1994 elections. On September 30, 1994, the district court denied the motion. Memorandum Opinion and Order dated Sept. 30, 1994

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[7] Petitioners mistakenly argued below that the contribution refund provision is a recently-enacted addition to the campaign finance law. In reality, the precursor to this refund provision was first enacted in 1978, and it has been part of the system in one form or another since then, except during a brief hiatus from 1987 to 1990. See court of appeals decision. (App. A23.)

[8] Subsequently, Petitioner Rosenstiel lost in the primary election, and Petitioner Longley lost in the general election. Both indicated by affidavit that they intend to run for office again in the future. (App. A47.)

[9] See district court explanation of provisions challenged. (App. A48-A50.)

(App. A66). The court opined that Petitioners were likely to prevail on the merits of their arguments that the opponent's share provision and the contribution refund provision of the law were unconstitutional, but denied the preliminary injunction because of the significant disruption that would result from enjoining the law, on which so many candidates had relied, so close to the election. (App. A81-A84.)

Petitioners then moved for summary judgment. The district court granted the motion in part, holding the opponent's share provision unconstitutional and enjoining its enforcement. Memorandum Opinion and Order dated March 21, 1995 (hereinafter "Final Order") (App. A46). The court upheld the remainder of the challenged law. The court reasoned that the provisions that provide public funding in return for agreement to spending limits and allow a participating candidate to retain the subsidy but exceed the limits if a major-party opponent does not participate were "compatible with the traditional campaign reform systems sanctioned in *Buckley* and its progeny." (App. A53.) The court also upheld the contribution refund provision, holding that it did not burden the First Amendment rights of either contributors or candidates. (App. A60-A64.)

Petitioners appealed to the Court of Appeals for the Eighth Circuit.[10] The appellate court affirmed in a 2-1 decision.[11] (App. A1.)

The majority first concluded that the amendment of the expenditure limitation waiver while the case was pending before the court of appeals did not render the case moot, and that it would evaluate the constitutionality of the law as amended. (App. A6-A7.) Addressing the merits, the court reasoned that it first had to determine if the challenged law burdens the exercise of political speech, and then if it does, whether it is narrowly tailored to serve compelling state interests. (App. A8.)

As to the first part of the analysis, the court decided that participation in the campaign finance system is truly voluntary, and there is, therefore, no burden on First Amendment rights. The court held that the challenged inducements, the expenditure limitation waiver and the contribution refund provision, do not per se render the system coercive because they are not inherently penal. (App. A12.) Further, the court stated, they do not cause the package to be so benefit-laden that candidates are coerced into participation. (*Id.*) The court recognized the expenditure limitation waiver as an attempt to avoid a powerful disincentive to candidate participation by removing the risk of being significantly outspent by a

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[10] Respondent did not appeal the part of the district court decision that held the opponent's share provision unconstitutional.

[11] Petitioners did not seek rehearing en banc in the court of appeals.

non-participating opponent. (*Id.*) The court also opined that the 1996 amendment permitting a non-participating opponent to raise up to 50% of the expenditure limit before the expenditure limitation waiver was triggered indicated a lack of coercion. (App. A13.) The court saw the contribution refund provision as merely an extension of the public subsidy that created no greater coercive effect. In sum, the court concluded that the system provides candidates with an additional option for financing their campaigns that is strictly voluntary and does not burden First Amendment rights. (App. A16.)

Alternatively, the court held that even if there were some burden on political speech, the challenged provisions are narrowly tailored to serve compelling state interests and therefore survive strict scrutiny. The court concluded that the state has a compelling interest in stimulating participation in a public campaign financing program that is intended to reduce the possibility and appearance of corruption that may arise from dependence on large campaign contributions. (App. A18.) The court noted that the basic system of providing public funding in return for agreement to abide by expenditure limits is consistent with laws that have long been upheld by this and other courts. (App. A19.)

Turning to the specific provisions challenged by Petitioners, the court held that the expenditure limitation waiver is narrowly tailored to serve the compelling interest of stimulating participation, because without it the fear of being outspent by a well-financed, privately-funded opponent would be a strong disincentive to participation, especially in a system where the subsidy can be no greater than half the spending limit. (App. A19-

A20.) Similarly, the court held the contribution refund satisfies the strict scrutiny test as a part of the public subsidy that encourages participation, because candidates will believe it can stimulate contributions from a broader array of citizens. (App. A22.)

Finally, the court rejected Petitioners' argument that the campaign financing system is unlawful because it discriminates against challengers. The court found no constitutional requirement that such a system must place challengers on an equal footing with incumbents where the laws treat them even-handedly. The court found unpersuasive Petitioners' attempt to establish a discriminatory legislative motive based on the comments of one legislator about the recent amendment to the expenditure limitation waiver that treats all candidates equally and simply removed a loophole not initially envisioned by the legislature. (App. A25.) Finally, the majority pointed out several ways in which the campaign finance system actually benefits challengers. (App. A26.)

The dissenting judge disagreed with virtually everything in the majority opinion. Initially, it was his view that the amendment to the expenditure limitation waiver required remand to the district court. (App. A31.) Nevertheless, since the majority reached the merits, the dissent gave its views also. The dissent expressed the belief that the law does infringe on First Amendment rights by creating a coercive system. (App. A32-A40.) The dissent viewed the expenditure limitation waiver not as a permissible inducement to participation, but a penalty imposed on a non-participating candidate's choice to forgo public subsidy and avoid spending limits. The dissent also disagreed with the majority's conclusions that

the challenged provisions are narrowly tailored to serve compelling state interests. (App. A40-A44.)

REASONS FOR DENYING THE PETITION

There is no reason for the Court to grant review in this case. The decision of the court of appeals is neither contrary to decisions of this Court nor those of any other court. Rather, the ruling is consonant with principles enunciated by this Court and with those few decisions that have addressed the constitutionality of public subsidy campaign finance laws. Moreover, although the general subjects of this case, First Amendment rights and campaign finance reform laws, are obviously significant, the analysis here turns on the very specific provisions of the state law at issue. A ruling by this Court would, therefore, provide little in the way of general guidance for other courts and legislatures.

I. THE COURT OF APPEALS DECISION IS NOT IN CONFLICT WITH DECISIONS OF THIS OR ANY OTHER COURT.

This case does not present any conflict for the Court to resolve. To begin with, very few courts have addressed issues similar to those presented in this case, that is, whether a state campaign finance system that provides partial public funding to candidates in return for agreement to limit expenditures crosses the line from a permissible voluntary system to an impermissible coercive system that violates the First Amendment. The decision

in this case is fully consistent with the rulings in those few cases.

A. The Court Of Appeals Ruling That The Public Financing System Is Voluntary And Does Not Burden First Amendment Rights Is Consistent With Prior Cases.

Petitioner posits that the court of appeals decision is inconsistent with the principles established in *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam). However, it was in *Buckley* that this Court enunciated the central premise on which the Minnesota law is founded: that the government can, consistent with the First Amendment, offer public campaign funding in return for agreement to limit campaign expenditures. *Id.* at 57, n.65. The Court applied that principle in upholding against a direct First Amendment attack the system of presidential public campaign funding conditioned on acceptance of spending limits. *See Republican National Committee v. Federal Election Commission*, 445 U.S. 955 (1980), *aff'g mem.*, 487 F. Supp. 280 (S.D.N.Y.) (three-judge court) ("*RNC*"). That general principle is not challenged by Petitioners.

Rather, Petitioners question the application of the principle to the particular elements of the Minnesota campaign financing system, arguing that the Minnesota law does not present candidates with the voluntary choice approved in *Buckley* and *RNC*, but instead coerces candidates into participating. They contend that the court of appeals' conclusion that the Minnesota system is voluntary and therefore does not burden First Amendment

rights conflicts with *Buckley* and "unconstitutional conditions" cases. However, as the three-judge court decision affirmed by this Court in *RNC* explained: " 'not every burden on the exercise of a constitutional right, and not every pressure or encouragement to waive such a right is invalid.' " 487 F. Supp. at 285 (quoting *Corbitt v. New Jersey*, 439 U.S. 212, 218 (1978)). That the court of appeals concluded that the particular mix of inducements contained in the Minnesota program does not rise to the level of impermissible coercion, and as a result does not infringe First Amendment rights, therefore presents no conflict with this Court's precedents.

Moreover, the decision below is consistent with those of other courts that have addressed similar challenges to state public funding/spending limit laws. The decision of the Eighth Circuit is fully consistent with the First Circuit's decision addressing a challenge to an analogous Rhode Island law. *See Vote Choice, Inc. v. DiStefano*, 4 F.3d 26 (1st Cir. 1993). The discussion of *Vote Choice* in the decision below illustrates the harmony between the two decisions and makes extensive discussion here unnecessary. (App. A10-A12.) Suffice to say that the First Circuit upheld a state campaign finance law that provided partial public funding for gubernatorial candidates who agreed to an expenditure limit. The system released a participating candidate from the expenditure limit if his opponent spent or raised money in excess of the limit. In addition, the Rhode Island system provided higher limits for contributions to participating candidates than to those who did not participate. The law was challenged as a coercive imposition of spending limits in violation of candidates' First Amendment rights. The Eighth Circuit analyzed the

reasoning of the First Circuit and found it both persuasive and applicable in the case at bar.

In *Wilkinson v. Jones*, 876 F. Supp. 916 (W.D. Ky. 1995), the district court denied a preliminary injunction in a case raising a similar challenge to a similar Kentucky law. Like the Minnesota law challenged here, the Kentucky law provided partial public campaign funding to candidates who agreed to expenditure limits. The law also provided for waiver of the expenditure limit for a participating candidate if a non-participating opponent received contributions or made expenditures in excess of the spending limit. The court held the plaintiff was not likely to succeed on his First Amendment challenge to the spending limit waiver. The court was:

> not convinced that [the waiver provision] impermissibly chills the speech of privately-financed candidates simply because it enables the speakers' adversaries to respond. It occurs to this court that the [waiver] provision promotes more speech, not less.

Id. at 928.

The Eighth Circuit decision is in synch with these rulings. Like the Rhode Island and Kentucky laws, Minnesota's system infringes no First Amendment rights. The Minnesota campaign finance law is a permissible voluntary program that establishes incentives for candidates to accept public funding coupled with expenditure limits.[12]

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[12] Much of Petitioners' "coercion" argument is premised on the claim that the challenged laws penalize a candidate's decision not to participate. Although the majority correctly

The court of appeals conclusion that the Minnesota system does not violate Petitioners' First Amendment rights is consistent with the pronouncements of this Court and others that have addressed similar issues.

Beyond the semantic debate whether the public funding/spending limit system is voluntary or coercive, actual experience under the law belies Petitioners' contention that the effect of the law is to force unwilling candidates to agree to expenditure limits that they would otherwise exceed. Common sense dictates that candidates who wanted to spend more but were forced to accept the limits would spend all that the law permits. However, as the record reflects, in 1992 the average campaign spending on both house and senate contests was barely more than half of the amount allowed by the statutory limits. See p. 3, *supra*. Obviously, for the average spending to be that low, few candidates could have spent up to the limits, belying any claim of pervasive coerced participation.[13]

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rejected this argument, it is nevertheless worth noting that it applies only to the expenditure limitation waiver. Other provisions challenged by Petitioners, such as the participating candidate's entitlement to the public subsidy and the contribution refund available to her contributors are not affected by the opponent's choice regarding participation.

[13] At oral argument before the Eighth Circuit, Petitioners claimed that the low average spending was the result of many incumbents running unopposed. Lest Petitioners again make that asertion in reply, the Court should be aware that it is both unsupported in the record and factually incorrect. In the 1992 elections there were only twelve unopposed legislative races out of 201. *See* Election Division, Minnesota Secretary of State, *The Minnesota Legislative Manual 1993-1995* at 362-77.

When it has been confronted with a state law that is coercive rather than voluntary, the Eighth Circuit has so ruled. In *Shrink Missouri Government PAC v. Maupin*, 71 F.3d 1422 (8th Cir. 1995), *cert. denied*, 116 S. Ct. 2579 (1996), the court held that the spending limit provisions of Missouri's campaign finance laws were unconstitutional. The law provided that a candidate who did not agree to the spending limit could accept contributions from individuals, but not from PACs, political parties or other organizations, and those candidates were required to file daily disclosure reports once they exceeded the spending limits. Candidates who agreed to the limits were not subject to either the contribution restrictions or the daily disclosure requirement. *Id.* at 1424. The court held that this system imposed penalties rather than providing inducements, because rather than giving a participating candidate a benefit he would not otherwise enjoy, such as public funding, the system penalized non-participating candidates by taking away something they would otherwise be entitled to (the right to accept organizational contributions) and by imposing the additional task of daily disclosure. *Id.* at 1425. This system is obviously distinguishable from the Minnesota system that takes nothing away from non-participating candidates and only provides added benefits to participating candidates. The difference between the two systems and the appropriately different rulings in each case are a further indication that there is no reason for this Court to intercede.

B. The Court Of Appeals Alternative Ruling That The Challenged Laws Are Narrowly Tailored To Serve Compelling State Interests Does Not Conflict With Prior Cases.

The court of appeals decided further that even if there were some First Amendment burden imposed by the state campaign finance laws, they would survive strict scrutiny because they are narrowly tailored to serve well-recognized compelling state interests. (App. A17.) This ruling is also consistent with decisions of other courts, and would provide a basis for affirmance of the decision even if the Court disagreed with the lower court's first conclusion. Accordingly, the alternative holding provides an additional reason why the Court should not grant the petition.

Courts that have considered public funding/expenditure limit systems have uniformly acknowledged that reduction in the reliance on large contributions and the attendant risk of corruption or appearance of corruption and the increased opportunities for candidate communication in place of fund-raising are compelling state interests that are served by such systems. *E.g.*, *Buckley*, 424 U.S. at 91; *RNC*, 487 F. Supp. at 285; *Vote Choice*, 4 F.3d at 39. Those cases make it absolutely clear that a state can pursue these compelling state interests by conditioning receipt of public campaign funding on agreement to expenditure limits. Thus, the most fundamental elements of the Minnesota law, and the court of appeals decision upholding it, are consistent with prior decisions. The particular provisions challenged by Petitioners also fit into that construct.

The contribution refund provision is just part of the public funding mechanism. (App. A13.) The refund provision ties part of the subsidy to the candidate's popularity, as measured by the willingness of voters to contribute to her campaign, but that relationship is also consistent with earlier precedent. *See Bang v. Chase*, 442 F. Supp. 758, 766 (D. Minn. 1977) (three-judge court), *aff'd*, 436 U.S. 941 (1978) (Minnesota tax check-off system by party valid).

Petitioners' objection to the Eighth Circuit's approval of the expenditure limitation waiver is similarly meritless. The court of appeals explained how this provision serves the compelling interest of the state in encouraging participation in the system by removing a significant potential impediment to participation – the fear that a participating candidate will be grossly outspent by a non-participating candidate. The Eighth Circuit's decision that the expenditure limitation waiver is narrowly-tailored to serve the statute's compelling purposes is consistent with the alternative ruling of the court in *Wilkinson* concerning the Kentucky waiver. *Wilkinson*, 876 F. Supp. at 928 ("The provision prevents the publicly-funded candidate from being penalized for deciding to accept public funds.").

Moreover, in the district court Petitioners virtually conceded that this provision is necessary to a successful system. Referring to the provisions that free a participating candidate from the spending limit and allow her to retain the public subsidy when faced by a non-participating opponent, Petitioners acknowledged: "The legislature could reasonably have concluded that both of these features were *essential* to give the new system of spending limits a fair chance to succeed." Final Order, n.3, quoting

Plaintiffs' Mem. in Support of Mot. for Summary Judgment at 9 (emphasis added in district court quotation) (App. A53). Thus, there is no genuine disagreement that these provisions are necessary to serve the purposes of the law.

Petitioners also complain that by amending the law in 1996 to provide for the triggering of the expenditure limitation waiver by the spending or fund-raising of a non-participating candidate, the legislature was not serving legitimate purposes, but was protecting incumbent legislators against independent challenges. The Eighth Circuit saw this amendment for what it was: simply an attempt to close a loop-hole in the law that had not initially been perceived. (App. A25.) More to the point, Petitioners have no standing to challenge the impact of the amended law as it may affect the decisions of a non-major-party candidate, because they were both major-party candidates that the change in the law did not even arguably affect adversely.[14]

C. The Court Of Appeals Ruling That The Campaign Finance Law Does Not Unlawfully Discriminate Against Challengers Is Consistent With Established Legal Principles.

Finally, Petitioners fault the court of appeals for rejecting their argument that the Minnesota campaign

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[14] As to majory-party candidates, the amendment meant that instead of an automatic triggering of the expenditure limitation waiver by their non-participation, the waiver would not come into play unless and until they reached designated thresholds of contributions or spending. See p. 4, *supra*.

finance law unconstitutionally discriminates against challengers in favor of incumbents.[15] Once again, with this issue as well as the others, Petitioners have failed to identify any case with which the Eighth Circuit ruling is in direct conflict. Rather, the ruling is consistent with prior decisions of this Court.

First, in *Buckley* this Court rejected a challenge to contribution limits based on alleged discrimination against challengers and in favor of incumbents, explaining:

> [T]he Act applies the same limitations on contributions to all candidates regardless of their present occupations, ideological views, or party affiliations. Absent record evidence of invidious discrimination against challengers as a class, a court should generally be hesitant to invalidate legislation which on its face imposes even-handed restrictions.

Buckley, 424 U.S. at 31. The Court rejected broad generalizations offered by plaintiffs, noting that the effect of a contribution ceiling could well vary depending on a number of factors. Here, Petitioners offer only broad generalizations attributing discriminatory motives to the

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[15] As Respondent pointed out in the court of appeals, neither of the Petitioners have standing to raise this claim that the law favors incumbents. Plaintiff Rosenstiel sought the opportunity to run against a long-time incumbent in the general election, but did not do so because he lost in the primary. Plaintiff Longley ran in the general election, but did not face an incumbent in his race.

Minnesota Legislature. The court of appeals found Petitioners' claims of discriminatory legislative intent unpersuasive and unsupported. (App. A25.)

Additionally, the three-judge court decision in *RNC* affirmed by this Court rejected the premise that public financing schemes must eliminate the inherent disadvantages faced by candidates challenging incumbents. The court explained:

> [R]egardless of whether a campaign is publicly or privately funded, it is inevitable that some candidates will have advantages over others. To require that public funding equalize these differences would distort its purpose, which is to facilitate political communication by providing an alternative to private funding with its burdens and unhealthy influences.

RNC, 487 F. Supp. at 287. The court of appeals properly applied this reasoning to the instant case. Indeed, the court explained several ways in which the Minnesota system can present challengers with advantages they would otherwise not enjoy, including a provision that gives first-time candidates an increased subsidy. (App. A26.)

In summary, Petitioners have identified no genuine conflict between the decision of the court of appeals here and any relevant decision of this Court or any other court. The decision below applies the correct legal standards and does so in a manner consistent with the rulings of other courts that have addressed similar challenges. There is no dispute among the courts for this Court to resolve and there is no deviation from this Court's precedent for the Court to correct.

II. CERTIORARI IS NOT WARRANTED BECAUSE THE IMPACT OF THE DECISION IS NARROW.

Beyond the fact that the decision below presents no conflict that requires resolution, there is an additional reason why the petition for certiorari should not be granted. This case does not present the kind of broad-reaching issues that warrant this Court's review.

First, Petitioners' argument is tied closely to the particular structure of the Minnesota system. As the foregoing section illustrates, there is no dispute about the general principles that apply to a constitutional challenge of this kind. Petitioners do not challenge the central tenet on which the Minnesota system is based: that a state can offer public campaign funding in return for a candidate's agreement to adhere to expenditure limitations. Rather, Petitioners' primary contention is that the challenged provisions of the Minnesota system take it beyond the realm of a permissible voluntary program and in fact coerce unwilling candidates to participate. Because the determination whether the system is voluntary or coercive is so tied to the particular provisions of the law, the decision below and any decision of this Court if the petition were granted would necessarily be of limited application to statutes that contain different provisions.

Furthermore, much of Petitioners' argument is premised on legislative history specific to the Minnesota laws. In this Court and below, Petitioners have based their argument on statements made by particular Minnesota legislators. (*E.g.*, Pet. 5, 10-11.) The court of appeals found these snippets of legislative history inapposite and unpersuasive. (App. A15, A25.) However, even if they

were germane, any decision dependent on those statements would have little bearing on the constitutionality of any other state's laws. Similarly, Petitioners argue based on the particulars of when specific provisions of the Minnesota law were enacted and what the rates of participation in the public funding program were at those times. (Pet. 22.) These additional factors, unique to the law challenged here, further limit the impact of the decision and counsel against granting the petition.

CONCLUSION

For the forgoing reasons, the petition for writ of certiorari should be denied.

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Respectfully submitted,

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